FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10403**
November 29, 1990]

AMENDMENTS TO REGULATION Y

— Reduced-Rate Credit Cards
— Reduced Filing Requirements

To All Depository Institutions and Bank Holding Companies in the Second Federal Reserve District, and Others Concerned:

The following statements have been issued by the Board of Governors of the Federal Reserve System:

Credit cards

The Federal Reserve Board has announced approval of an amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to allow banks owned by bank holding companies to offer a price reduction on credit cards issued to their customers if the customer also obtains a traditional banking product from any of the credit card bank's affiliates.

The amendment is effective December 18, 1990.

This limited exemption for reduced-rate credit cards is granted in accordance with the Board's exemptive authority under section 106 of the Bank Holding Company Act Amendments of 1970. Section 106, generally prohibiting banks from offering reduced consideration for credit on the condition that the customer also obtain some additional service from the holding company affiliate of the bank, authorizes the Board to grant exemptions that are not contrary to its purpose of preventing anticompetitive practices.

In order to be eligible for the exemption, the credit card and traditional banking products offered as part of an arrangement must also be available for separate purchase by a customer. In addition, the Board retains the right to terminate any exemption if it results in anticompetitive practices.

Filing requirements

The Federal Reserve Board has announced approval of an amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to reduce the filing requirements under the Change in Bank Control Act.

The amendment is essentially the same as the proposal the Board issued for public comment in July of this year.

The amendment will remove the current regulatory requirement that a person who has already received regulatory clearance to acquire 10 percent or more of the shares of a state member bank or bank holding company must file additional notices under the Change in Bank Control Act for subsequent acquisitions resulting in ownership of between 10 and 25 percent of the shares of the bank or bank holding company.

Enclosed are the texts of the amendments, which have been reprinted from the *Federal Register* of November 15 and 16. Questions regarding Regulation Y may be directed to our Domestic Banking Applications Division (Tel. No. 212-720-5861).

E. GERALD CORRIGAN,
President.

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Regulation Y; Docket No.R-0699
Amendment on
Reduced-Rate Credit Cards
(Effective December 18, 1990)

[Enc. Cir. No. 10403]

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0699]

Exemption Permitting Banks To Offer Reduced-Rate Credit Cards to Customers of Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)) ("section 106") generally prohibits banks from offering reduced consideration for credit or other services on the condition that the customer also obtain some additional service from the bank or a holding company affiliate of the bank. This exemption would permit banks to offer a price reduction on credit cards issued to their customers if the customer also obtains a traditional banking product from any of the credit card bank's affiliates.

EFFECTIVE DATE: December 18, 1990.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Senior Attorney (202/452–3711) or Mark J. Tenhundfeld, Attorney (202/452–3612), Legal Division; or Anthony Cyrnak, Economist (202/452–2917), Division of Research and Statistics, Board of Governors. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 106 generally prohibits banks from offering reduced consideration for credit or other services if that reduction is conditioned on a requirement that the customer also obtain some additional service from the bank or a holding company affiliate of the bank.[1] However, section 106 provides that the Board may, by regulation or order, "permit such exceptions . . . as it considers will not be contrary to the purposes" of section 106.

Pursuant to this exemptive authority, the Board recently approved separate requests by Norwest Corporation, Minneapolis, Minnesota ("Norwest"), and NCNB Corporation, Charlotte, North Carolina ("NCNB"), to consolidate their credit card operations into card-issuing banks and to offer reduced-rate credit cards to customers of their affiliate banks.[2]

Norwest and NCNB proposed to vary the consideration (including interest rates and fees) charged on a credit card issued by one of their banks if the cardholder also obtained a "traditional banking product" (defined by section 106 as a loan, discount, deposit or trust service) from any of their other subsidiary banks.[3] Regardless of the combination of banking services offered, the proposed variation in consideration would occur on the credit card (the tying product) and was conditioned upon the customer also obtaining traditional banking products (the tied products) from a subsidiary bank of the card-issuing bank's parent holding company. In addition, all products offered under this arrangement were also available to customers for separate purchase.

The Norwest and NCNB proposals were prohibited under the literal terms of section 106. Under its provisions, a bank may not offer reduced-rate credit on the condition that a customer also obtain some additional service from an affiliate of that bank.[4] Accordingly, without an exemption under section 106 from the Board, a multi-bank holding company like Norwest and NCNB would be prohibited from offering a reduced-rate credit card at one of its banks on the condition that a customer also obtain a traditional banking product from one of its other affiliated banks.

In order to grant an exemption, section 106 requires the Board to find that the reduced-rate credit card arrangement would not be contrary to the purposes of the section. The legislative history indicates that the purpose of the section was to address an underlying Congressional concern regarding fair competition and that its prohibitions were "intended to provide specific statutory assurance that the use of the economic power of a bank will not lead to a lessening of competition or unfair competitive practices."[5]

This legislative history also indicates that the Board should exercise its exemptive authority selectively. The Senate banking committee's report states that "the committee expects that by such regulation or order the Board will continue to allow appropriate traditional banking practices."[6] The Supplementary Views of Senator Brooke filed with the Senate Report note that "adequate discretion is vested in the Federal Reserve Board to provide exceptions where such are founded on sound economic analysis."[7]

In determining whether the proposed exemption would be inconsistent with section 106's purpose and legislative history, the Board has considered it appropriate to analyze the competitiveness of the relevant credit card market. In the Board's view, unless it would be likely that the seller's market power in the credit card market for the tying product is high enough to force a consumer to also purchase on uncompetitive terms a traditional banking service in the tied product market, a reduced-rate credit card arrangement would not appear to produce anticompetitive effects.

The Board has found the relevant market for credit cards to be national in scope[8] and, with nearly 5,000 card-issuers, relatively unconcentrated. In the case of Norwest and NCNB, their small

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[1] Such arrangements constitute tie-ins and may result in a customer being forced or induced to purchase a product that the customer does not want (the "tied product") in order to obtain a product that the customer desires (the "tying product").

[2] *Norwest Corporation and NCNB Corporation*, 76 Federal Reserve Bulletin 702 (1990).

[3] For example, a depositor maintaining a minimum deposit balance at any of their affiliate banks might be eligible for a credit card with no membership fee.

[4] Section 106 permits a bank to reduce consideration for credit or other services if the customer obtains some other traditional banking service from that bank. This exception does not apply, however, where the credit from one bank is conditioned on obtaining an additional product from an affiliate. Thus, while section 106 permits a bank to require a customer to obtain its own traditional banking services as a condition for reduced-rate credit, its does not permit a bank to impose the same requirements for a traditional banking service offered by an affiliate of the bank.

[5] S. Rep. No. 1084, 91st Cong., 2d Sess. 16 (1970) ("Senate Report"). The Senate banking committee's report explains: "The purpose of [section 106] is to prohibit anticompetitive practices which require bank customers to accept or provide some other service or product or refrain from dealing with other parties in order to obtain the bank product or service they desire." Senate Report at 17.

[6] Senate Report at 17.

[7] Senate Report at 46.

[8] *First Chicago Corporation*, 73 Federal Reserve Bulletin 600 (1987); *RepublicBank Corporation*, 73 Federal Reserve Bulletin 510 (1967).

market shares and the presence of many other competitors providing credit cards in the tying product market indicated that they could not exercise sufficient market power to impair competition in the tied product market for traditional banking services.[9] The Board also noted that both companies would continue to offer credit cards and traditional banking services separately,[10] and, given the competitive nature of the credit card market, these separately available products would be required to be offered at competitive prices.

Under these circumstances, the Board concluded that the Norwest and NCNB proposals were not contrary to the purpose of section 106, and that granting the exemptions was consistent with the legislative history of the Board's authority to permit exemptions for traditional banking services on the basis of economic analysis. Approval was conditioned, however, on the Board's right to terminate the credit card proposals if conditions developed to indicate that the arrangement was resulting in anticompetitive practices that were inconsistent with the purpose of section 106.

In light of section 106's purpose of preventing unfair competitive practices, and the relatively unconcentrated nature of the national credit card market, the Board also considered it appropriate to permit reduced-rate credit card arrangements by bank holding companies, without the need for acting on individual requests. Accordingly, the Board proposed an amendment to Regulation Y authorizing bank holding companies generally to offer reduced rates on credit cards for customers of their affiliated depository institutions under the same circumstances discussed in the Norwest and NCNB approvals.[11] During the regulatory comment period, the Board received 49 written comments, with 40 in favor of and 9 opposed to the proposal.

Discussion

Commenters opposing the proposed amendment generally argued that reduced-rate credit card arrangements would permit larger bank holding companies to compete unfairly against smaller holding companies for credit card customers. The Board believes, however, that the proposed exemption addresses the potential for unfair competitive practices in several respects. As the Board has previously noted, concerns regarding reduced-rate credit card proposals from an antitrust perspective are substantially reduced when the buyer is free to obtain the tying or tied product separately, thus assuring the availability of these products to customers not wishing to obtain all the products offered in the arrangement. Moreover, the competitiveness of the credit card market would require that the separately available credit cards be offered at competitive prices. In any event, the Board has reserved the right to terminate any reduced-rate credit card arrangement offered under the proposed exemption that results in anticompetitive practices.

One commenter disputed the conclusions to be drawn from the data on credit card receivables and alleged that the credit card industry is highly concentrated. As previously discussed in the Norwest and NCNB Order, however, these data confirm the relatively unconcentrated nature of the credit card market. The approximately 5,000 card-issuers in the market for credit card services substantiate the existence of numerous competitors in the present market and the absence of significant barriers for entry by prospective competitors. The largest single issuer has less than 20 percent of all credit card outstandings and cannot be characterized as being dominant enough to exercise significant market power through its market share. In addition, the credit card market is also national in geographic scope. This national scope implies that, regardless of local banking market structure, customers can choose from many competitive alternatives for basic credit card services, thus making it unlikely that any one competitor would be able to exert monopolistic power in any local market for credit cards. And, as noted above, the Board can terminate any reduced-rate credit card program if the facts demonstrate that competitors offering the program can exert sufficient power in this market to result in anticompetitive practices.

Seventeen of the commenters in favor of the proposal have requested that the Board expand the proposal to include one or both of the following: (i) A variation in consideration for any traditional banking product; and (ii) traditional banking products offered by nonbanking subsidiaries in addition to depository subsidiaries of the card-issuing bank's parent holding company.

As discussed above, section 106 permits the Board to approve only exemptions that are not contrary to the purpose of preventing anticompetitive practices. In the case of the reduced-rate credit cards, an analysis of the current credit card market indicates that no seller's market power in this tying product market is high enough to force a consumer to also purchase on uncompetitive terms a traditional banking product in the tied product market.

In the Board's view, analyses of the market for other tying banking products would be appropriate before the Board expanded the scope of the proposed amendment. The Board has found that the competitive characteristics of the credit card market are an appropriate consideration in determining whether an exemption for credit cards would not be contrary to the purposes of section 106 for purposes of exercising its exemptive authority. Accordingly, the Board believes that market analyses for the other proposed tying products would be relevant to the Board's determination of whether those tying products would result in anticompetitive practices and thus would be inconsistent with the purposes of section 106. In this regard, staff reviews market characteristics of banking products may be concluded in the future.[12]

The Board believes it appropriate, however, to expand the proposed exemption to include traditional banking

[9] According to market data as of December 31, 1988, Norwest accounted for less than 1 percent of total credit card balances outstanding and NCNB held only 1 percent among the top 100 care-issuers. Moreover, the top 100 card-issuing institutions accounted for approximately 80 percent of total industry outstandings and Citicorp, the largest single issuer, accounted for 18 percent of all credit card balances outstanding.

[10] Under antitrust precedent, anticompetitive concerns are substantially reduced where the buyer is free to take either product by itself even though the seller may also offer the two items as a unit at a single price. *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 6, n.4 (1958).

[11] 55 FR 26453 (1990).

[12] For example, staff has recently completed an analysis of the lending market for small businesses. According to this study, the market for these services is relatively local in scope.

products offered by both depository and nonbanking subsidiaries of the card-issuing bank's parent holding company. Multi-bank holding companies today offer a variety of traditional banking products through nonbanking subsidiaries. In addition, the Board notes that subsequent Congressional action in other contexts regarding prohibitions similar to section 106 tends to support the inclusion of all subsidiaries within the exemption. For example, Federal thrifts are permitted to offer arrangements with traditional banking services obtained from any of the thrift's affiliates.[13] In the Competitive Equality Banking Act of 1987 ("CEBA"), which applied the prohibitions of section 106 to nonbank banks, Congress indicated that these restrictions "would not be violated by tying one of these traditional banking services offered by a grandfathered nonbank of another traditional banking service offered by an affiliate."[14] While this excerpt does not accurately reflect the literal terms of section 106, it lends support for expanding the proposed exemption to include traditional banking products offered by any of the card-issuing bank's affiliates, given the lack of economic evidence of anticompetitive effects.[15]

[13] 12 U.S.C. 1464(q)(1). During the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, amendments to similarly exempt traditional banking services offered by subsidiaries of bank holding companies from section 106's prohibitions were unsuccessfully offered in both House and Senate banking committees.

[14] H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess. 128–29 (1987).

[15] In light of section 106's applicability to nonbank banks, the Board notes that the proposed amendment to Regulation Y for reduced-rate credit cards would also apply to holding companies entitled to grandfathered treatment under CEBA, subject to any additional restrictions imposed on such companies.

Analysis of the final rule

The final rule would permit a bank owned by a bank holding company to vary the consideration (including interest rates and fees) charged on extensions of credit made pursuant to a credit card offered by the bank (including a credit card bank) on the basis of the condition or requirement that a customer also obtain traditional banking products from another subsidiary of the card-issuing bank's parent holding company. However, both the credit card and the traditional banking products offered in the arrangement must be separately available for purchase by the customer. Moreover, the Board may terminate any exemption if facts develop to indicate that the arrangement is resulting in anticompetitive practices.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this final rule will not have a significant economic impact on a substantial number of small entities that will be subject to the regulation.

List of Subjects in 12 CFR Part 225

Administrative practices and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and record keeping requirements, Securities, State member banks.

For the reasons set forth in this document, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.4, paragraph (d) is redesignated as paragraph (d)(1), the heading to newly redesignated paragraph (d)(1), is revised, and new paragraph (d)(2) is added to read as follows:

§ 225.4 Corporate practices.

* * * * *

(d)(1) *Limitation on tie-in arrangements.*

* * * * *

(2) *Exemption for credit cards.* A bank (including a credit card bank) owned by a bank holding company may vary the consideration (including interest rates and fees) charged on extensions of credit made pursuant to a credit card offered by the bank on the basis of the condition or requirement that a customer also obtain a loan, discount, deposit, or trust service (but no other products) from another subsidiary of the card-issuing bank's parent holding company, if the credit card and the loan, discount, deposit, or trust service offered in the arrangement are also separately available for purchase by a customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

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By order of the Board of Governors of the Federal Reserve System, November 8, 1990.

William W. Wiles,

Secretary of the Board.

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Regulation Y; Docket No.R-0700
Amendment on
Reduced Filing Requirements
(Effective November 9, 1990)

[Enc. Cir. No. 10403]

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0700.]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending the portion of Regulation Y, 12 CFR part 225, implementing the Change in Bank Control Act (the "CIBC Act") to remove the current regulatory requirement that a person that has already received regulatory clearance to acquire 10 percent or more of the voting shares of a state member bank or bank holding company file additional notices under the CIBC Act for subsequent acquisitions resulting in ownership of between 10 and 25 percent of the shares of the bank or bank holding company. This amendment is intended to reduce the regulatory burden under the CIBC Act without impairing the Board's ability to properly evaluate acquisitions under the statutory factors set forth under the CIBC Act.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452-3583), Mark J. Tenhundfeld, Attorney (202/452-3612), or Elizabeth Thede, Attorney (202/452-3274), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638), or Beverly L. Evans, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2573). For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

A. *Background.* Under the CIBC Act, 12 U.S.C. § 1817(j), persons acting directly or indirectly or through or in concert with one or more other persons to acquire control of any state member bank or bank holding company must provide the Board with 60 days prior written notice describing the proposed acquisition. The transaction may proceed at the end of the 60-day period unless the Board disapproves the transaction or extends the notice period. Alternatively, an acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

Regulation Y identifies certain transactions that are presumed to constitute the acquisition of control and require the filing of prior notice with the Board. In particular, § 225.41(b)(2) of Regulation Y establishes a regulatory presumption requiring the filing of a notice under the CIBC Act if, after an acquisition, any person or group of persons acting in concert will own, control, or hold with power to vote 10 percent or more of a class of voting securities of a bank or bank holding company and if either: (i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (5 U.S.C. § 781), or (ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction. 12 CFR 225.41(b)(2).

Under this regulation, a person must make CIBC Act filings for each acquisition of additional voting shares of the bank or bank holding company until the person acquires 25 percent or more of the shares of the bank or bank holding company. The Board's regulations provide that a shareholder that continuously controls 25 percent or more of a class of voting securities and that has received regulatory approval for that acquisition is generally not required to file further notices under the CIBC Act to acquire additional voting shares. 12 CFR 225.42(a).

Many of the notices currently filed with the Board under the CIBC Act involve situations where a shareholder that has already been subject to the regulatory review process under the CIBC Act seeks to acquire a small number of additional shares with a minimal expenditure of funds. In other instances, a person that has already received regulatory clearance to own less than 25 percent of the shares of a bank or bank holding company may be required by the Board's current regulations to file a notice in connection with a redemption by the bank or bank holding company of shares of another shareholder, even though the percentage ownership of the individual increases only minimally and the individual expends no funds and acquires no additional shares.

On July 2, 1990 (55 FR 28,216 (July 10, 1990)), the Board sought public comment on a proposal to amend subpart E of Regulation Y, which implements the CIBC Act, to eliminate the filing requirement under the CIBC Act for most acquisitions of shares of a state member bank or bank holding company where the shareholder has already received regulatory clearance to control 10 percent or more of the voting shares of the bank or bank holding company and, after the proposed acquisition, the shareholder would control less than 25 percent of the voting shares of the bank or bank holding company. The Board received 40 comments from interested individuals and organizations regarding this proposal. The principal issues raised by the comments are discussed below.

Comments in support of the proposed amendment. All but three of the commenters favored adoption of the Board's proposal. Most of these comments concluded that the current regulation requires filings that are unnecessary in connection with *de minimis* acquisitions. A number of commenters stated that the proposed amendment would reduce the regulatory burden on banks and bank holding companies without impairing the Board's ability to evaluate persons that have acquired control of a state member bank or bank holding company.

Comments in opposition to the proposed amendment. Three commenters opposed the proposed amendment. One of these commenters stated that the acquisition of additional shares above 10 percent could increase the ability of an individual to control a bank or bank holding company and, therefore, the ability of such an individual to disrupt the target institution. Another commenter suggested that the Board's review of a notice to acquire 10 percent of the voting shares of an institution could be less critical than would be its review of a notice to acquire 24 percent. In this commenter's view, the holder of 24 percent of an institution's voting shares would have greater ability and incentive to control the institution, thereby making a closer review of the financial resources and character of the shareholder more important than if the shareholder intended to acquire only 10 percent of the shares for investment purposes. The remaining commenter opposed to the proposal argued that

each acquisition of voting shares should remain subject to regulatory review in order to assure that there has been no adverse change in circumstances since the time the person was permitted to acquire 10 percent of the company's shares. This commenter also suggested that the proposed amendment will place small financial institutions whose stock is not registered under the Securities Exchange Act of 1934 at a disadvantage because these institutions rely on the public notice provided under the CIBC Act to monitor acquisitions of the company's shares in the 10 to 25 percent range.

Modifications to Address Comments. The Board has reviewed the public comments and, in light of the entire record, has determined to amend its regulation as proposed, with the modifications discussed below. In the Board's experience, the requirement for additional filings by a person that has already been subject to regulatory review and seeks to control less than 25 percent of the voting shares of the same bank or bank holding company imposes significant burdens on the acquiring person without identifying significant financial, managerial, competitive, or other problems.

Under this amendment, in considering proposals to acquire between 10 and 25 percent of the voting shares of a bank or bank holding company, the Board will review the financial, managerial, competitive and other statutory factors under the CIBC Act to determine whether any of these factors warrant a requirement that the notificants file additional notices for subsequent acquisitions under 25 percent of the shares of the bank or bank holding company. The Board also retains supervisory authority over bank holding companies and state member banks that the Board believes is adequate to address situations where a change in circumstances would make additional acquisitions by a current owner unsafe or unsound for the bank or bank holding company. Moreover, the Board continues to require the filing of a notice under the CIBC Act when a person (or persons acting in concert) intends to acquire 25 percent or more of the voting shares of a bank or bank holding company. The amended regulation is similar to the approach taken by the Comptroller of the Currency and the Federal Deposit Insurance Corporation, both of which permit a shareholder that has already received clearance under the CIBC Act for an acquisition above 10 percent of the voting shares of a bank to make additional acquisitions of voting shares without further filings under the CIBC Act.

The Board has made several modifications to its original proposal to address concerns raised by commenters. First, the Board has clarified in the final rule that the exception proposed in the amendment is available to persons whose acquisition of shares has been reviewed in connection with a transaction approved under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) ("BHC Act") or section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) ("FDI Act"). This modification is consistent with the Board's current regulations that provide an exception from the CIBC Act notice requirements for transactions that are subject to review under section 3 of the BHC Act or section 18(c) of the FDI Act. In this regard, in connection with its review of proposals under section 3 of the BHC Act or under 18(c) of the FDI Act, the Board currently applies the standards of the CIBC Act to persons that will control 10 percent or more of the voting shares of the acquiring bank or bank holding company, including conducting a name check of the shareholder where appropriate. Because this review is conducted as part of the review under the BHC Act or the FDI Act, the Board believes that it is appropriate to permit a person subject to this review the same exemption as is available to persons whose initial acquisition is reviewed under the CIBC Act. A person that acquired between 10 and 25 percent of the voting securities of a company in connection with an application under section 3 of the BHC Act or section 18(c) of the FDI Act still must file a notice under the CIBC Act if the person seeks to acquire additional voting shares sufficient to raise the person's aggregate shareholdings to 25 percent or more of any class of securities of the bank or bank holding company, or if the person is notified at the time the application is approved by the Board or Reserve Bank that additional filings are otherwise required.

Another commenter suggested that the proposed amendment apply to additional acquisitions by person that acquired ownership of between 10 and 25 percent of a bank holding company prior to the effective date of this amendment. The Board intends that this amendment will apply to all persons that have received approval under the CIBC Act or, as explained above, through section 3 of the BHC Act or section 18(c) of the FDI Act, to hold between 10 and 25 percent of the voting shares of a bank or bank holding company, regardless of when the approval was granted, unless further acquisitions by these persons have been limited by the Board or appropriate Reserve Bank. The final regulation adopts this interpretation by *not* including a provision that the amendment applies only to persons that have obtained regulatory clearance after the effective date of this amendment.

Another commenter suggested that a person should be allowed to acquire up to 100 percent of the shares of a bank or bank holding company without filing any additional notice under the CIBC Act where the person is the largest shareholder and has received approval to acquire 10 percent or more of the bank or bank holding company. The Board continues to believe that it is appropriate to require a single additional notice under the CIBC Act by such a person (or persons acting in concert) prior to the person's acquisition of 25 percent or more of the bank or bank holding company. At the time such an acquisition is proposed, the Board will evaluate whether the acquiror has sufficient financial and managerial resources to acquire up to 100 percent of a class of voting securities of the bank or bank holding company, and whether other relevant statutory factors are consistent with a decision not to disapprove the acquisition of all of the shares of the bank or bank holding company by the acquiror.

Another commenter requested clarification as to how the proposed amendment would treat additional acquisitions by persons acting in concert. Specifically, the commenter sought clarification of whether persons that have filed a joint notice under the CIBC Act to acquire less than 25 percent of the voting shares of a bank or bank holding company would be permitted by the proposed amendment to make additional acquisitions without further filings under the CIBC Act so long as the aggregate of all such acquisitions by the persons acting in concert remained

below 25 percent. The Board intends that persons filing a joint notice will be covered by this amendment so long as the persons collectively do not acquire 25 percent or more of the voting shares of the bank or bank holding company. The Board notes, however, that any person that is a member of a group acting in concert and has not received approval to acquire, in his or her individual capacity, 10 percent or more of the voting shares of the bank or bank holding company continues to be required to file a notice under the CIBC Act prior to acquiring 10 percent or more of the company's voting shares individually.

One of the commenters opposing the Board's proposed amendment recommended that, as an alternative to the proposed amendment, the Board should require a notice when a specific increment of stock is acquired (for instance, five percent) or, in the alternative, when a certain amount of time (for instance, 12 months) has expired since the date of last approval. Similarly, another of the commenters opposing the Board's proposed amendment recommended that the Board revise the proposed amendment to authorize only a 5 percent increase in the ownership of shares beyond what the Board has authorized a person to hold.

The Board notes that, under its amendment, the Federal Reserve System retains the authority to require filings under the CIBC Act for additional acquisitions where the Board or Reserve Bank believes that the financial and managerial resources or other circumstances of a proposed acquiror indicate that monitoring of additional acquisitions in a specific case is appropriate. In these cases, the Board or the Reserve Bank will notify a bank, bank holding company, or acquiring shareholder at the time the initial notice (or application under section 3 of the BHC Act or section 18(c) of the FDI Act) is approved that additional notices under the CIBC Act would be required for subsequent acquisitions of shares resulting in the ownership or control of between 10 and 25 percent of the voting securities of the bank or bank holding company.[1] In light of this, and for the reasons discussed above, the Board believes that it is unnecessary to require in all instances additional notices under the CIBC Act for acquisitions of between 10 and 25 percent of the voting shares of a bank or bank holding company by persons that have received approval under the CIBC Act to acquire 10 percent or more of the bank or bank holding company.

Regulatory Flexibility Act Analysis

This amendment to the Board's Regulation Y will decrease the burden on small companies by narrowing the circumstances under which shareholders of small banks and bank holding companies must file notices under the CIBC Act. No additional regulatory burden will be placed on such companies. Moreover, the amendment will not impose any additional regulatory burden on banks or bank holding companies of any size that are targets of a proposed change in control. Thus, the proposal is not expected to have any adverse economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act Analysis

This amendment reduces the number of instances in which notices must be filed with the Federal Reserve System under the CIBC Act. Accordingly, the regulation will lessen the paperwork burden for individuals, small businesses, and other "persons," as defined in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

[1] Failure to file additional notices after having been informed that such notices are required will be treated as a violation of the Board's regulation and, as such, may result in the Board or the Reserve Bank initiating enforcement proceedings.

For the reasons set out in this document, and pursuant to the Board's authority under section 13 of the Change in Bank Control Act (12 U.S.C. 1817(j)(13)), the Board amends 12 CFR part 225 as follows:

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.42, paragraph (a) is redesignated as paragraph (a)(1), the heading to paragraph (a)(1) is revised, and new paragraph (a)(2) is added to read as follows:

§ 225.42 Transactions not requiring prior notice.

* * * * *

(a)(1) *Increase of previously authorized acquisitions above 25 percent.* * * *

(2) *Increase of previously authorized acquisitions between 10 percent and 25 percent.* Unless the Board or Reserve Bank otherwise provides by order, the acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of 10 percent or more of that class of voting securities either after filing the notice required under § 225.41(b)(2) of this subpart to acquire voting securities of the bank or bank holding company or in connection with an application approved under section 3 of the Bank Holding Company Act or section 18(c) of the Federal Deposit Insurance Act, if the aggregate amount of voting securities held following the acquisition is less than 25 percent of any class of voting securities of the institution.

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By order of the Board of Governors of the Federal Reserve System, November 9, 1990.

William W. Wiles,

Secretary of the Board.

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